



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Chris Ashby, Esq.
Ashby Law PLLC
717 Princess Street
Alexandria, VA 22314

JAN 24 2017

RE: MUR 6892
Walker 4 NC and Collin McMichael
as treasurer
Jay and Katrina Whitt

Dear Mr. Ashby:

On October 30, 2014, the Federal Election Commission notified your clients, Walker 4 NC and Collin McMichael in his official capacity as treasurer (the "Committee"), and Jay and Katrina Whitt, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. On January 13, 2017, based upon information contained in the complaint, as well as information supplied by your clients, the Commission decided to exercise its prosecutorial discretion and dismissed the allegations that the Committee violated 52 U.S.C. § 30116(f) concerning the use of a leased vehicle and the acceptance of a raffle prize. On the same date, the Commission dismissed the allegations that the Committee violated 52 U.S.C. § 30104(b) concerning the receipt and reporting of a raffle prize, and found no reason to believe that the Committee violated 52 U.S.C. § 30116(f) concerning the acceptance of certain Political Action Committee contributions to retire Committee debt.

In addition, the Commission exercised its prosecutorial discretion and dismissed the allegations that Jay and Katrina Whitt violated 52 U.S.C. § 30116(a)(1)(A). Accordingly, the Commission closed its file in this matter on January 13, 2017.

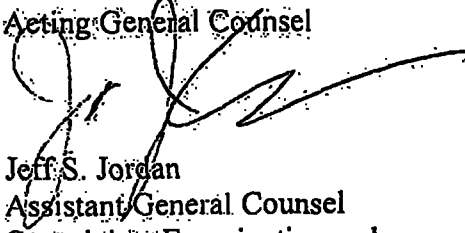
Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

Chris Ashby, Esq.
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If you have any questions, please contact Ruth Heilizer, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson
Acting General Counsel



BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosures
Factual and Legal Analyses (2)

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Walker 4 NC MUR 6892
and Collin McMichael as treasurer¹

I. INTRODUCTION

This matter was generated by a Complaint filed on October 27, 2014, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by Respondents Walker 4 NC and Collin McMichael in his official capacity as treasurer (collectively the "Committee"). It was scored as a relatively low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

The Complaint in this matter alleges that the Respondents, Walker 4 NC and Collin McMichael in his official capacity as treasurer (the "Committee") violated multiple provisions of the Act and Commission regulations. The Complaint's allegations include:

- the making and receipt of excessive, unreported in-kind contributions in the form of the campaign's "frequent[], if not daily" use of a bus owned by the Whitts during a 400-day period;
- the making and receipt of an excessive, unreported in-kind contribution in the form of the use of a time-share in Cancun, Mexico, donated by a supporter as a prize for a fundraiser raffle; and
- the receipt of three separate \$5,000 excessive contributions from Freedom Project, Next Century Fund, and Majority Committee PAC, which were designated for debt retirement, but the Committee did not report any debt to which these contributions could be applied.

¹ Charles K. Rakestraw was the Committee's treasurer during the time period at issue. Mr. McMichael is currently the Committee's treasurer.

1 In response, the Committee states that the Walker campaign negotiated a reasonable lease
2 with the Whitts for the “occasional” use of their 34-year-old bus for an eight-month period. The
3 rental amount was \$500 per month, plus the costs for service, repairs, maintenance, and fuel.
4 The campaign used the bus a total of sixteen times, twelve during the lease period, and four
5 times after, pursuant to an oral agreement. The Committee further argues that, based on its
6 research, there was no market in the local area for a bus as old as the Whitts’ bus. The
7 Committee maintains that it paid the Whitts \$5,954.89 for its use of the bus and that it properly
8 disclosed the payments.

9 As for the fundraiser raffle prize,² the Committee concedes that it mistakenly believed it
10 did not have to disclose the value of the prize until it was redeemed, but that it would amend its
11 report to disclose the in-kind contribution.³

12 Finally, the Committee observes that Walker was a candidate in both the primary and
13 runoff elections, held on May 6, 2014, and July 15, 2014, respectively, for the Republican
14 nomination in North Carolina’s Sixth Congressional District. According to the Committee, in
15 the fifteen days between the close of the July Quarterly reporting period and the date of the
16 runoff election, it incurred debts to vendors in connection with the runoff. The Committee,
17 however, paid the vendors by September 30, 2014, the end of the reporting period, so there was
18 no runoff debt to report.⁴ With respect to the primary election, the Committee states that it
19 “unexpectedly received a late invoice from a vendor” for services performed during the primary

² The Committee states that the prize was for lodging at a time-share resort.

³ Subsequently, the Committee revised its 2014 Pre-Runoff Election Report to disclose an in-kind contribution of \$1,554.79 from Cindy Boger. *See* Amended Pre-Runoff Election Report, filed on January 28, 2015, at 13, 73.

⁴ The Committee’s disbursements would still have been reflected on Schedule B.

1 election. Therefore, the Committee claims that it was proper to solicit contributions to retire its
2 primary and runoff election debt.

3 A contribution includes “any gift, subscription, loan, advance, or deposit of money or
4 anything of value.” 52 U.S.C. § 30101(8)(A)(i). The term “anything of value” includes in-kind
5 contributions of goods or services without charge, or at less than the usual and normal charge.
6 11 C.F.R. § 100.52(d)(1). Political committees must report the name and address of each person
7 who makes a contribution aggregating over \$200 per election cycle, as well as the date, amount,
8 and purpose of such payments. 52 U.S.C. § 30104(b)(3)(A).

9 In 2014, individual contributions to candidate committees were limited to \$2,600 per
10 election, and multicandidate political committees, such as Freedom Project, Next Century Fund,
11 and Majority Committee PAC, could not make a contribution to a candidate that exceeded
12 \$5,000 per election. 52 U.S.C. § 30116(a)(1)(A),(2)(A). A primary election, runoff election,
13 and general election are each considered separate “elections” under the Act, and the contribution
14 limits are applied separately with respect to each election. 52 U.S.C. §§ 30101(1)(A) and
15 30116(a)(6). Candidate committees are also prohibited from accepting excessive contributions.
16 52 U.S.C. § 30116(f).

17 If a committee has net debts outstanding after an election, the campaign may accept
18 contributions after the election to retire the debts, provided that the contribution is designated for
19 that election, the contribution does not exceed the contributor’s limit for the designated election,
20 and the campaign has net debts outstanding for the designated election on the day it receives the
21 contribution. 11 C.F.R. §§ 110.1(b)(3)(i) and (iii).

1 Since it appears that the Committee had sufficient primary and runoff election debt to
2 accept these debt retirement contributions, the Commission finds that there is no reason to
3 believe that the Committee violated 52 U.S.C. § 30116(f).

4 The Complaint provided no factual support for the contention that the fair market value
5 of the lease exceeded the Committee's payments to the Whitts. The Committee and the Whitts
6 provided a copy of the lease, a sales receipt showing that the bus was built in 1980 and cost the
7 Whitts \$30,000 in 2013, receipts for repair expenses the Committee incurred under the lease, and
8 a log showing the Committee used the bus sixteen times during a period of about six months.
9 Respondents also described their unsuccessful attempts to ascertain rental costs for similarly
10 aged buses. In other recent cases involving buses and RVs rented by committees, the
11 Commission dismissed allegations where, for a number of reasons, it was difficult to determine
12 the fair market value of the rental.⁵ Given the age of the Whitts' bus and the fact that the
13 Committee paid certain expenses under the lease, thus potentially lowering the fair market value,
14 the Commission dismisses this allegation as well.⁶

15 The Committee concedes that it failed to timely report the raffle prize. However, once
16 the omission was called to its attention, the Committee amended its Pre-Runoff Election Report
17 to disclose the value of the prize. In light of the Committee's remedial action, the Commission

⁵ See MUR 6674 (Montanans for Rehberg) F&LA at 6-7 (dismissing excessive contribution allegation given difficulty of ascertaining comparable values of similar rented buses and lack of detail as to how parties arrived at valuations of the rental of the 13-year-old bus); MUR 6295 (Lowden) F&LA at 6-7 (dismissing excessive contribution allegation regarding rental of 10-year-old RV needing substantial repairs, for which the Committee paid).

⁶ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). The Complaint also alleges that the lease was an excessive in-kind contribution because the bus was wrapped in vinyl, bore the candidate's name and image, and was not available to the Whitts during the lease. Respondents argue that the parties had an oral understanding that the Whitts could use the bus during the lease, but the record does not reflect that they ever did. While the Commission could spend resources to determine the value of the campaign's apparently uninterrupted access to the bus, and whether a disclaimer should have, or did, appear on the wrapped bus, the Commission believes such inquiry would be an inefficient use of its resources under the particular facts of this case.

- 1 dismisses the allegation that the Committee failed to properly report the raffle prize in violation
- 2 of 52 U.S.C. § 30104(b), pursuant to *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jay and Katrina Whitt

MUR 6892

I. INTRODUCTION

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II. FACTUAL AND LEGAL ANALYSIS

The Complaint in this matter alleges that the Whitts, along with Walker 4 NC and Collin McMichael in his official capacity as treasurer (the "Committee") violated the Act and Commission regulations. The Complaint's allegations include the making and receipt of excessive, unreported in-kind contributions in the form of the campaign's "frequent[], if not daily" use of a bus owned by the Whitts during a 400-day period.

In response, the Whitts and the Committee state that the Walker campaign negotiated a reasonable lease with the Whitts for the "occasional" use of their 34-year-old bus for an eight-month period. The rental amount was \$500 per month, plus the costs for service, repairs, maintenance, and fuel. The campaign used the bus a total of sixteen times, twelve during the lease period, and four times after, pursuant to an oral agreement. The Whitts and the Committee further argue that, based on its research, there was no market in the local area

1 for a bus as old as the Whitts' bus. They maintain that the Committee paid the Whitts
2 \$5,954.89 for its use of the bus and that the Committee properly disclosed the payments.

3 A contribution includes "any gift, subscription, loan, advance, or deposit of money or
4 anything of value." 52 U.S.C. § 30101(8)(A)(i). The term "anything of value" includes in-
5 kind contributions of goods or services without charge, or at less than the usual and normal
6 charge. 11 C.F.R. § 100.52(d)(1). Political committees must report the name and address of
7 each person who makes a contribution aggregating over \$200 per election cycle, as well as the
8 date, amount, and purpose of such payments. 52 U.S.C. § 30104(b)(3)(A).

9 In 2014, individual contributions to candidate committees were limited to \$2,600 per
10 election. 52 U.S.C. § 30116(a)(1)(A). Candidate committees are also prohibited from
11 accepting excessive contributions. 52 U.S.C. § 30116(f).

12 The Complaint provided no factual support for the contention that the fair market
13 value of the lease exceeded the Committee's payments to the Whitts. The Committee and the
14 Whitts provided a copy of the lease, a sales receipt showing that the bus was built in 1980 and
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18 costs for similarly aged buses. In other recent cases involving buses and RVs rented by
19 committees, the Commission dismissed allegations where, for a number of reasons, it was
20 difficult to determine the fair market value of the rental.¹ Given the age of the Whitts' bus

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- 1 and the fact that the Committee paid certain expenses under the lease, thus potentially
- 2 lowering the fair market value, the Commission dismisses the allegation that Jay and Katrina
- 3 Whitt violated 52 U.S.C. § 30116(a)(1)(A), pursuant to *Heckler v. Chaney*, 470 U.S. 821,
- 4 831-32 (1985).²

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² The Complaint also alleges that the lease was an excessive in-kind contribution because the bus was wrapped in vinyl, bore the candidate's name and image, and was not available to the Whitts during the lease. Respondents argue that the parties had an oral understanding that the Whitts could use the bus during the lease, but the record does not reflect that they ever did. While the Commission could spend resources to determine the value of the campaign's apparently uninterrupted access to the bus, and whether a disclaimer should have, or did, appear on the wrapped bus, the Commission believes such inquiry would be an inefficient use of the Commission's resources under the particular facts of this case. See *Heckler*, 470 U.S. at 831-832.